

2009 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB729)

Received: 04/12/2010

Received By: rnelson2

Wanted: As time permits

Companion to LRB:

For: Thomas Nelson (608) 266-2418

By/Representing: Ben

May Contact:

Drafter: rnelson2

Subject: Courts - civil procedure
Real Estate - miscellaneous

Addl. Drafters:

Extra Copies:

Submit via email: YES

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

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Mortgage foreclosure procedures

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/1	rnelson2 04/12/2010	csicilia 04/13/2010	mduchek 04/13/2010	_____	sbasford 04/13/2010	sbasford 04/13/2010	
/2	rnelson2 04/13/2010	csicilia 04/14/2010	phenry 04/14/2010	_____	cduerst 04/14/2010	cduerst 04/14/2010	

FE Sent For:

<END>

2009 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB729)

Received: 04/12/2010

Received By: rnelson2

Wanted: As time permits

Companion to LRB:

For: Thomas Nelson (608) 266-2418

By/Representing: Ben

May Contact:

Drafter: rnelson2

Subject: Courts - civil procedure
Real Estate - miscellaneous

Addl. Drafters:

Extra Copies:

Submit via email: YES

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

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

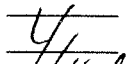

Topic:

Mortgage foreclosure procedures

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/1	rnelson2 04/12/2010	csicilia 04/13/2010	mduchek 04/13/2010	 4/13/10	sbasford 04/13/2010	sbasford 04/13/2010	
FE Sent For:		1/2 cjs 4/14/10	4/14/10 Ph	 <END>			

2009 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB729)

Received: 04/12/2010

Received By: rnelson2

Wanted: As time permits

Companion to LRB:

For: Thomas Nelson (608) 266-2418

By/Representing: Ben

May Contact:

Drafter: rnelson2

Subject: Courts - civil procedure
Real Estate - miscellaneous

Addl. Drafters:

Extra Copies:

Submit via email: YES

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

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given


Topic:

Mortgage foreclosure procedures

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rnelson2	1 cjs 4/13 10	 4/13	4 4/13 p/13			

FE Sent For:

<END>

Nelson, Robert P.

From: Nerad, Ben
Sent: Monday, April 12, 2010 9:17 AM
To: Nelson, Robert P.
Subject: Mortgage foreclosure amendment

Bob,
Could you please draft the language below as a substitute amendment to AB 729? Please note that there are slight changes to some of the language that you've drafted previously. Let me know if you need any clarification.

Thanks,

Ben

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

NOTIFICATION

(2) NOTIFICATION. Before commencing an action to foreclose on a mortgage loan involving owner-occupied residential property, a mortgagee or mortgage servicer shall provide to the borrower at his or her last-known address by certified mail a written notice that contains all of the following information:

- (a) That the mortgage loan is in default and a mortgage foreclosure action may be commenced, the reason that the mortgage loan is in default, and the action required of the borrower to cure the default.
- (b) The name, address, and telephone number of the mortgagee negotiator.
- (c) The names and addresses of adjustment service companies licensed under s. 218.02, and of independent nonprofit organizations approved by the federal department of housing and urban development, that offer credit counseling services to homeowners.
- (d) That the borrower may request modifications to the mortgage loan by contacting the mortgagee negotiator.

5391 ✓

AFFIDAVIT

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

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

- (a) "Government-sponsored enterprises" means the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Government National Mortgage Association.
- (b) "Mortgage modification program" means the federal home affordable modification program established by the U.S. department of the treasury under 12 USC 5219.
- (c) "Mortgage modification program participant" means a financial institution or mortgage servicer that has executed an agreement with the Federal

From 5360

National Mortgage Association, in its capacity as financial agent for the United States, to be a participant in the mortgage modification program.

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

(e) "Owner-occupied residential property" means a one-family to 4-family dwelling, which, at the time the mortgage loan was originated, was occupied or intended to be occupied, by the mortgagor as his or her place of residence.

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

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

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

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

(3) DETERMINATION. (a) In all mortgage foreclosure actions involving owner-occupied residential property, the court shall not enter a judgment of foreclosure and sale until the court has received a copy of the affidavit as required under sub. (2) and made the determination required under par. (d).

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

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

(d) If the court determines that the facts set forth in the affidavit under sub.

(2) are not in dispute, the foreclosure action may continue.

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

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

(5) TERMINATION. This section does not apply after December 31, 2012.

SECTION 2. Initial applicability.

(1) The treatment of section 846.015 (1) to (3) of the statutes first applies to foreclosure actions commenced on the effective date of this subsection.

ABANDONMENT NOTIFICATION

SECTION 1. 846.01 (1) of the statutes is renumbered 846.01 (1m) and amended to read:

846.01 (1m) Except as provided in sub. (2), in actions for the foreclosure of



AB 672 ✓

mortgages upon real estate, if the plaintiff recover, the court shall render judgment of foreclosure and sale, as provided in this chapter, of the mortgaged premises or so much of the premises as may be sufficient to pay the amount adjudged to be due upon the mortgage and obligation secured by the mortgage, with costs. The plaintiff shall provide the defendant with a written notice together with the summons and complaint that is used to commence the action for foreclosure of a mortgage of residential property. The written notice shall inform the defendant that if the court issues a judgment of foreclosure, the defendant continues to be the owner of the residential property for all purposes, including the responsibility for the payment of real estate taxes, until the property is sold at a sheriff's sale or other sale, the sale is confirmed by the court, and the new owner records the deed with the register of deeds. If the plaintiff fails to include the written notice required under this subsection, the court shall dismiss the foreclosure action.

SECTION 2. 846.01 (1g) of the statutes is created to read:

846.01 (1g) In this section, "residential property" means real estate that includes, or that the owner intends to develop so that it includes, a one-family to 4-family dwelling, which may be a condominium unit, that the owner uses or intends to use as his or her principal place of residence.

SECTION 3. 846.01 (2) of the statutes is amended to read:

846.01 (2) A judgment of foreclosure and sale shall not be entered until 20 days after the lis pendens has been filed. If the court issues a judgment of foreclosure on residential property, the court shall provide written notice to the defendant that he or she continues to be the owner of the residential property for all purposes, including the responsibility for the payment of real estate taxes, until the property is sold at a sheriff's sale or other sale, the sale is confirmed by the court, and the new owner records the deed with the register of deeds.

TENANT NOTIFICATION FIX

amend s. 846.35 as follows:

B. Foreclosure Provisions for Existing Tenants

846.35 of the statutes is amended to read:

846.35 Protections for tenants in foreclosure actions. (1) NOTICES FROM PLAINTIFF. (a) If residential rental property is the subject of a foreclosure action, the plaintiff shall provide the following written notices at the following times to the tenants who are in possession of each rental unit when a notice is given:

1. No later than 530 days after the foreclosure action is filed, notice that the plaintiff has commenced a foreclosure action with respect to the rental property.
2. No later than 530 days after the judgment of foreclosure is entered, notice that the plaintiff has been granted a judgment of foreclosure with respect to the rental property and notice of the date on which the statutory redemption period ends.
3. When the confirmation of sale hearing has been scheduled, notice of the date and time of the hearing.

(b) Each notice shall include a statement of the rights and obligations of the tenant specified under sub. (2).

(bc) The notices under par. (a) may be given in any of the following ways:

1. By personal service as provided in s. 801.11(1).
2. By certified mail with certificate of mailing, and, separately, by first class mail -with return-receipt-requested. Notice given under this subdivision is considered completed when it is mailed, postage paid, to the tenant, or occupant in possession if the tenant's name is unknown to plaintiff, at the dwelling unit

~~address, unless the envelope enclosing the notice is returned unopened to the plaintiff.~~ All notices mailed under this subdivision shall be mailed in envelopes upon which the plaintiff's, or the plaintiff's attorney's, return address appears, ~~with a request to return to that address.~~

846.35 (2)(c) is created to read:

(2) (c) The rights and obligations of landlord and tenant under Chapter 704 and under the lease that existed prior to the confirmation of sale otherwise apply during the period that the tenant remains in possession under this section.

Nelson, Robert P.

From: Nerad, Ben
Sent: Monday, April 12, 2010 2:46 PM
To: Nelson, Robert P.
Subject: FW: Mortgage foreclosure amendment

Bob,
Please do not put in the "ABANDONMENT NOTIFICATION" section from below for the time being.

Thanks,

Ben

From: Nerad, Ben
Sent: Monday, April 12, 2010 9:17 AM
To: Nelson, Robert P.
Subject: Mortgage foreclosure amendment

Bob,
Could you please draft the language below as a substitute amendment to AB 729? Please note that there are slight changes to some of the language that you've drafted previously. Let me know if you need any clarification.

Thanks,

Ben

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

NOTIFICATION

(2) NOTIFICATION. Before commencing an action to foreclose on a mortgage loan involving owner-occupied residential property, a mortgagee or mortgage servicer shall provide to the borrower at his or her last-known address by certified mail a written notice that contains all of the following information:

- (a) That the mortgage loan is in default and a mortgage foreclosure action may be commenced, the reason that the mortgage loan is in default, and the action required of the borrower to cure the default.
- (b) The name, address, and telephone number of the mortgagee negotiator.
- (c) The names and addresses of adjustment service companies licensed under s. 218.02, and of independent nonprofit organizations approved by the federal department of housing and urban development, that offer credit counseling services to homeowners.
- (d) That the borrower may request modifications to the mortgage loan by contacting the mortgagee negotiator.

AFFIDAVIT

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

846.015 Additional mortgage foreclosure procedures for

owner-occupied residential property. (1) DEFINITIONS. In this section:

- (a) "Government-sponsored enterprises" means the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Government National Mortgage Association.
- (b) "Mortgage modification program" means the federal home affordable modification program established by the U.S. department of the treasury under 12 USC 5219.
- (c) "Mortgage modification program participant" means a financial institution or mortgage servicer that has executed an agreement with the Federal National Mortgage Association, in its capacity as financial agent for the United States, to be a participant in the mortgage modification program.
- (d) "Mortgage servicer" means the servicing agent of the mortgagee.
- (e) "Owner-occupied residential property" means a one-family to 4-family dwelling, which, at the time the mortgage loan was originated, was occupied or intended to be occupied, by the mortgagor as his or her place of residence.

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

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

1. That the mortgage loan is not eligible for modification under the mortgage modification program.
2. That the process required by the mortgage modification program has been completed without resulting in a modification of the mortgage loan and that the plaintiff has sent written notification of that result to the mortgagor.

(3) DETERMINATION. (a) In all mortgage foreclosure actions involving owner-occupied residential property, the court shall not enter a judgment of foreclosure and sale until the court has received a copy of the affidavit as required under sub. (2) and made the determination required under par. (d).

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

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

(d) If the court determines that the facts set forth in the affidavit under sub.

(2) are not in dispute, the foreclosure action may continue.

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

(4) MORTGAGE MODIFICATION PROGRAM PARTICIPANTS. The department of financial

institutions shall maintain a current list of mortgage modification program participants on the department's public Internet Web site.

(5) TERMINATION. This section does not apply after December 31, 2012.

SECTION 2. Initial applicability.

(1) The treatment of section 846.015 (1) to (3) of the statutes first applies to foreclosure actions commenced on the effective date of this subsection.

ABANDONMENT NOTIFICATION

SECTION 1. 846.01 (1) of the statutes is renumbered 846.01 (1m) and amended to read:

846.01 **(1m)** Except as provided in sub. (2), in actions for the foreclosure of mortgages upon real estate, if the plaintiff recovers, the court shall render judgment of foreclosure and sale, as provided in this chapter, of the mortgaged premises or so much of the premises as may be sufficient to pay the amount adjudged to be due upon the mortgage and obligation secured by the mortgage, with costs. The plaintiff shall provide the defendant with a written notice together with the summons and complaint that is used to commence the action for foreclosure of a mortgage of residential property. The written notice shall inform the defendant that if the court issues a judgment of foreclosure, the defendant continues to be the owner of the residential property for all purposes, including the responsibility for the payment of real estate taxes, until the property is sold at a sheriff's sale or other sale, the sale is confirmed by the court, and the new owner records the deed with the register of deeds. If the plaintiff fails to include the written notice required under this subsection, the court shall dismiss the foreclosure action.

SECTION 2. 846.01 (1g) of the statutes is created to read:

846.01 **(1g)** In this section, "residential property" means real estate that includes, or that the owner intends to develop so that it includes, a one-family to 4-family dwelling, which may be a condominium unit, that the owner uses or intends to use as his or her principal place of residence.

SECTION 3. 846.01 (2) of the statutes is amended to read:

846.01 **(2)** A judgment of foreclosure and sale shall not be entered until 20 days after the lis pendens has been filed. If the court issues a judgment of foreclosure on residential property, the court shall provide written notice to the defendant that he or she continues to be the owner of the residential property for all purposes, including the responsibility for the payment of real estate taxes, until the property is sold at a sheriff's sale or other sale, the sale is confirmed by the court, and the new owner records the deed with the register of deeds.

TENANT NOTIFICATION FIX

amend s. 846.35 as follows:

B. Foreclosure Provisions for Existing Tenants

846.35 of the statutes is amended to read:

846.35 Protections for tenants in foreclosure actions. (1) NOTICES FROM PLAINTIFF. (a) If residential rental property is the subject of a foreclosure action, the plaintiff shall provide the following written notices at the following times to the tenants who are in possession of each rental unit when a notice is given:

1. No later than 530 days after the foreclosure action is filed, notice that the plaintiff has commenced a foreclosure action with respect to the rental property.
2. No later than 530 days after the judgment of foreclosure is entered, notice that the plaintiff has been granted a judgment of foreclosure with respect to the rental property and notice of the date on which the

statutory redemption period ends.

3. When the confirmation of sale hearing has been scheduled, notice of the date and time of the hearing.

(b) Each notice shall include a statement of the rights and obligations of the tenant specified under sub. (2).

(b) The notices under par. (a) may be given in any of the following ways:

1. By personal service as provided in s. 801.11(1).

2. By certified mail with certificate of mailing, and, separately, by first class mail with return receipt requested. Notice given under this subdivision is considered completed when it is mailed, postage paid, to the tenant, or occupant in possession if the tenant's name is unknown to plaintiff, at the dwelling unit address, unless the envelope enclosing the notice is returned unopened to the plaintiff. All notices mailed under this subdivision shall be mailed in envelopes upon which the plaintiff's, or the plaintiff's attorney's, return address appears, ~~with a request to return to that address.~~

846.35 (2)(c) is created to read:

(2) (c) The rights and obligations of landlord and tenant under Chapter 704 and under the lease that existed prior to the confirmation of sale otherwise apply during the period that the tenant remains in possession under this section.

Nelson, Robert P.

From: Nerad, Ben
Sent: Tuesday, April 13, 2010 9:51 AM
To: Nelson, Robert P.
Subject: Mortgage foreclosure amendment

Bob,

Per my previous email, can you also please add the following 2 items to the substitute amendment?

1)

704.35 Residential rental property in foreclosure.

(1) DUTY OF LANDLORD TO PROVIDE NOTICE OF FORECLOSURE.

If a foreclosure action has been commenced against residential rental property, during the pendency of the action and before the expiration of the redemption period, the owner of the property shall notify any prospective tenant in writing of all of the following:

- (a) That a foreclosure action has been commenced against the rental property.
- (b) If judgment has been entered, the date on which the redemption period expires.
- (c) Each notice shall include a statement of the rights and obligations of the tenant specified under s. 846.35 (2).

2)

Addition to affidavit section below:

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

From: Nerad, Ben
Sent: Monday, April 12, 2010 2:46 PM
To: Nelson, Robert P.
Subject: FW: Mortgage foreclosure amendment

Bob,
Please do not put in the "ABANDONMENT NOTIFICATION" section from below for the time being.

Thanks,

Ben

From: Nerad, Ben
Sent: Monday, April 12, 2010 9:17 AM
To: Nelson, Robert P.
Subject: Mortgage foreclosure amendment

Bob,
Could you please draft the language below as a substitute amendment to AB 729? Please note that there are

704.35

704.35 Residential rental property in foreclosure.

704.35(1)

(1) (intro.) Duty of landlord to provide notice of foreclosure. If a foreclosure action has been commenced against residential rental property, during the pendency of the action and before the expiration of the redemption period, the owner of the property shall notify any prospective tenant in writing of all of the following:

704.35(1)(a)

(a) That a foreclosure action has been commenced against the rental property.

704.35(1)(b)

(b) If judgment has been entered, the date on which the redemption period expires.

846.35(1)

(1) Notices from plaintiff.

846.35(1)(a)

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

846.35(1)(a)1.

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

846.35(1)(a)2.

2. No later than 5 days after the judgment of foreclosure is entered, notice that the plaintiff has been granted a judgment of foreclosure with respect to the rental property and notice of the date on which the redemption period ends.



4/12
State of Wisconsin
2009 - 2010 LEGISLATURE
4/13

LRBs042716
RPN: f:...

95

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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

SA✓

D-N

Ins: 1-2A, 1-2B, 1-2C, 1-2D
Gen Cat

1 AN ACT *Gen Cat*; relating to: the foreclosure and sale of residential property.

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

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

4 846.35 (1) (a) (intro.) If residential rental property is the subject of a foreclosure
5 action, the plaintiff shall provide the following written notices at the following times
6 to the tenants who are in possession of each rental unit when a notice is given:

7 History: 2009 a. 2, 28.

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

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

History: 2009 a. 2, 28.

4 **SECTION 3.** 846.35 (1) (a) 2. of the statutes, as created by 2009 Wisconsin Act
5 2, is amended to read:

6 846.35 (1) (a) 2. No later than 5 30 days after the judgment of foreclosure is
7 entered, notice that the plaintiff has been granted a judgment of foreclosure with
8 respect to the rental property and notice of the date on which the redemption period
9 ends.

History: 2009 a. 2, 28.

10 **SECTION 4.** 846.35 (1) (am) of the statutes is created to read:

11 846.35 (1) (am) Each notice shall include a statement of the rights and
12 obligations of the tenant specified under sub. (2).

13 **SECTION 5.** 846.35 (1) (b) 2. of the statutes, as created by 2009 Wisconsin Act
14 2, is amended to read:

15 846.35 (1) (b) 2. By certified mail ~~with return receipt requested~~ supported by
16 a certificate of mailing obtained from the U.S. post office from which the mailing was
17 made, and, separately, by first class mail. Notice given under this subdivision is
18 considered completed when ~~it is mailed, unless the envelope enclosing the notice is,~~
19 returned unopened to the plaintiff postage pre-paid, to the tenant, or if the tenant's
20 name is unknown to the plaintiff to the occupant, at each rental unit address. All
21 notices mailed under this subdivision shall be mailed in envelopes upon which the
22 plaintiff's, or the plaintiff's attorney's, return address appears, ~~with a request to~~
23 return to that address.

under par. (a)

both mailings are sent

strike

*STET:
leave as typed*

History: 2009 a. 2, 28.

1 **SECTION 6.** 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:

History: 2009 a. 2, 28.

6 **SECTION 7.** 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.

704.35(1)(c)↑

14 cert
3-61

12 **SECTION 8. Initial applicability.**

13 (1) The treatment of sections 846.01 (1), (1g), and (2), 846.015 (1) to (4), and
14 846.35 (1) (a) (intro.), 1., and 2., (am), and (b) 2., and (2) (a) (intro.) of the statutes first
15 applies to foreclosure actions commenced on the effective date of this subsection.

keep this comma

16 (2) The treatment of section 846.35 (2) (c) of the statutes first applies to
17 foreclosure sales that are confirmed on the effective date of this subsection.

18 (END)

Nelson, Robert P.

From: Nerad, Ben
Sent: Tuesday, April 13, 2010 9:51 AM
To: Nelson, Robert P.
Subject: Mortgage foreclosure amendment

Bob,

Per my previous email, can you also please add the following 2 items to the substitute amendment?

1)
704.35 Residential rental property in foreclosure.

(1) DUTY OF LANDLORD TO PROVIDE NOTICE OF FORECLOSURE.

If a foreclosure action has been commenced against residential rental property, during the pendency of the action and before the expiration of the redemption period, the owner of the property shall notify any prospective tenant in writing of all of the following:

(a) That a foreclosure action has been commenced against the rental property.

(b) If judgment has been entered, the date on which the redemption period expires.

INS
1-2A

SECTION #. CR; 704.35(1)(c)

no underscoring

(c) ~~Each notice shall include a copy of the rights and obligations of the tenant specified under s. 846.35 (2).~~

no underscoring

704.35 (1)

2)
Addition to affidavit section below:

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

From: Nerad, Ben
Sent: Monday, April 12, 2010 2:46 PM
To: Nelson, Robert P.
Subject: FW: Mortgage foreclosure amendment

Bob,
Please do not put in the "ABANDONMENT NOTIFICATION" section from below for the time being.

Thanks,

Ben

From: Nerad, Ben
Sent: Monday, April 12, 2010 9:17 AM
To: Nelson, Robert P.
Subject: Mortgage foreclosure amendment

Bob,
Could you please draft the language below as a substitute amendment to AB 729? Please note that there are



ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2009 ASSEMBLY BILL 729

THS 1-2B

1 AN ACT *to create* 846.015 of the statutes; **relating to:** mortgage foreclosure
2 procedures.

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

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

4 **846.015 Additional mortgage foreclosure procedures for**
5 **owner-occupied residential property.** (1) DEFINITIONS. In this section:

6 (a) "Government-sponsored enterprises" means the Federal National
7 Mortgage Association, the Federal Home Loan Mortgage Corporation, and the
8 Government National Mortgage Association.

9 (b) "Mortgage modification program" means the federal home affordable
10 modification program established by the U.S. department of the treasury under 12
11 USC 5219.

- 2 -
INS
cent. 1-2 B

INS
1-20

1 (c) "Mortgage modification program participant" means a financial institution
2 that has executed an agreement on or before December 31, 2009, with the Federal
3 National Mortgage Association, in its capacity as financial agent for the United
4 States, to be a participant in the mortgage modification program.

5 (d) "Mortgage servicer" means the servicing agent of the mortgagee.

6 (e) "Owner-occupied residential property" means a one-family to 4-family
7 dwelling, which, at the time the mortgage loan was originated, was occupied or
8 intended to be occupied, by the mortgagor as his or her place of residence.

end of Ins 1-20

INS 1-20

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

INS
1-20

INS 1-20

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

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

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

24 (4) DETERMINATION. (a) In all mortgage foreclosure action^s involving
25 owner-occupied residential property, the court shall not enter a judgment of

*Ins: 1-20
Conf: 11*

3

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

3

13 (d) If the court determines that the facts set forth in the affidavit under sub.
14 (2) 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.

End of Ins 1-20

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

20

21 ⁶
22 (5) TERMINATION. This section does not apply after December 31, 2012.

SECTION 2. Initial applicability.

23 (1) The treatment of section 846.015 (1) to (3) of the statutes first applies to
24 foreclosure actions commenced on the effective date of this subsection.

(END)

*(initial) to and 2. (ans), and (6)²
and (6)²*

- 2 -
Ins 1-2C

1 (c) "Mortgage modification program" means the federal home affordable
2 modification program established by the U.S. department of the treasury under 12
3 USC 5219.

4 (d) "Mortgage modification program participant" means a financial institution
5 or mortgage servicer that has executed an agreement with the Federal National
6 Mortgage Association, in its capacity as financial agent for the United States, to be
7 a participant in the mortgage modification program.

8 (e) "Mortgage servicer" means the servicing agent of the mortgagee.

9 (f) "Owner-occupied residential property" means a one-family to 4-family
10 dwelling, which, at the time the mortgage loan was originated, was occupied or
11 intended to be occupied, by the mortgagor as his or her place of residence.

12 (2) NOTIFICATION. Before commencing an action to foreclose on a mortgage loan
13 involving owner-occupied residential property, a mortgagee or mortgage servicer
14 shall provide to the borrower at his or her last-known address by certified mail a
15 written notice that contains all of the following information:

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

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

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

24 (d) That the borrower may request modifications to the mortgage loan by
25 contacting the mortgagee negotiator

mortgagor (use 3x)

or mortgage servicer (use 2x)

End of Ins 1-2C

Insert 3-11

SECTION #.

AM; 846.35 (e) as created by 2009 Wisconsin Act 2

sub.(1) (a)

sub.(1)

846.35

(4)

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

846.35 - ANNOT.

NOTE: The correct cross-references and a missing word are shown in brackets. Corrective legislation is pending.

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

LRBs0427/?dn

RPN:/:...

cjs

date

After showing the draft to Pam Kahler, our landlord-tenant drafter, I made some changes in the language in s. 846.35 (1) (b) 2[✓] and (2) (c)[✓] and added amended s. 846.35 (2) (a) (intro.). Check them over to see if they are okay.

Please
=
review
ensure that
meet your intent

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**

LRBs0427/1dn
RPN:cjs:md

April 13, 2010

After showing the draft to Pam Kahler, our landlord-tenant drafter, I made some changes in the language in s. 846.35 (1) (b) 2. and (2) (c) and added amended s. 846.35 (2) (a) (intro.). Please review them to ensure that they meet your intent.

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

Nelson, Robert P.

From: Nerad, Ben
Sent: Tuesday, April 13, 2010 3:43 PM
To: Nelson, Robert P.
Subject: LRB 0427

Bob,

I'd like the following changes made to LRBs0427/1. Please draft again as substitute amendment to AB 729.

Thanks,

Ben

1) Add the following in the definitions section:

(b) "Mortgagee negotiator" means a mortgagee or mortgage servicer who has the authority to enter into negotiations regarding modifications to a mortgage loan involving owner-occupied residential property. ✓

2) p.2, line 7, add "means a financial institution or **mortgage servicer**" (add bolded words) ✓

3) p.2, line 8, delete "on or before December 31, 2009" ✓

4) p. 2, line 16, delete "mortgagee or mortgage servicer" and replace with "mortgage modification program participant" ✓

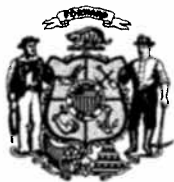
5) p. 2, lines 22-23, delete "or mortgage servicer" and add "negotiator" ✓

6) p. 3, line 3, delete "modifications" and insert in its place "to be considered under the mortgage modification program for a modification" ✓

7) p. 3, line 4, delete "or mortgage servicer" and insert in its place "negotiator" ✓

Ben Nerad

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



4/13
State of Wisconsin
2009 - 2010 LEGISLATURE

4/14 10 am

2
LRBs0427/A

RPN:cjs:md

Stays

ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2009 ASSEMBLY BILL 729

Regen Cat

regen.

but with
SAR

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 *Ins. 2-3 →*

(b) "Mortgage modification program" means the federal home affordable
5 modification program established by the U.S. department of the treasury under 12
6 USC 5219.

7 (c) "Mortgage modification program participant" means a financial institution
8 *or mortgage servicer*

9 that has executed an agreement *on or before December 31, 2009,* with the Federal
10 National Mortgage Association, in its capacity as financial agent for the United
11 States, to be a participant in the mortgage modification program.

12 (d) "Mortgage servicer" means the servicing agent of the mortgagee.

13 (e) "Owner-occupied residential property" means a one-family to 4-family
14 dwelling, which, at the time the mortgage loan was originated, was occupied or
15 intended to be occupied, by the mortgagor as his or her place of residence.

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

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

24 (b) The name, address, and telephone number of the mortgage *or mortgage*
25 *servicer negotiator*

(c) The names and addresses of adjustment service companies licensed under
s. 218.02, and of independent nonprofit organizations approved by the federal

to be considered under the mortgage modification program for a modified

1 department of housing and urban development, that offer credit counseling services
2 to homeowners.

3 (d) That the mortgagor may request modifications to the mortgage loan by
4 contacting the mortgagee or mortgage servicer *negotiator*

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

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

15 1. That the mortgage loan is not eligible for modification under the mortgage
16 modification program.

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

20 (4) DETERMINATION. (a) In all mortgage foreclosure actions involving
21 owner-occupied residential property, the court shall not enter a judgment of
22 foreclosure and sale until the court has received a copy of the affidavit as required
23 under sub. (3) and made the determination required under par. (d).

24 (b) If the court determines that the mortgage modification program is
25 applicable to the mortgage loan but that the process to determine if a modification

1 will be made under that program has not been completed, the court shall stay the
2 foreclosure action until the program's requirements are completed. If the action is
3 stayed, the plaintiff shall advise the court of the status of the action every 45 days.
4 If the plaintiff fails to advise the court of the status of the action every 45 days, the
5 court may dismiss the foreclosure action.

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

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

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

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

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

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

19 846.35 (1) (a) (intro.) If residential rental property is the subject of a foreclosure
20 action, the plaintiff shall provide the following written notices at the following times
21 to the tenants who are in possession of each rental unit when a notice is given:

22 **SECTION 4.** 846.35 (1) (a) 1. of the statutes, as created by 2009 Wisconsin Act
23 2, is amended to read:

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

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

6 846.35 (1) (a) 2. No later than ~~5~~ 30 days after the judgment of foreclosure is
7 entered, notice that the plaintiff has been granted a judgment of foreclosure with
8 respect to the rental property and notice of the date on which the redemption period
9 ends.

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

11 846.35 (1) (am) Each notice under par. (a) shall include a statement of the
12 rights and obligations of the tenant specified under sub. (2).

13 **SECTION 7.** 846.35 (1) (b) 2. of the statutes, as created by 2009 Wisconsin Act
14 2, is amended to read:

15 846.35 (1) (b) 2. By certified mail ~~with return receipt requested~~ supported by
16 a certificate of mailing obtained from the U.S. post office from which the mailing was
17 made, and, separately, by first class mail. Notice given under this subdivision is
18 considered completed when it is mailed, ~~unless the envelope enclosing the notice is~~
19 ~~returned unopened to the plaintiff~~ both mailings are sent, postage pre-paid, to the
20 tenant, or, if the tenant's name is unknown to the plaintiff, to the occupant, at each
21 rental unit address. All notices mailed under this subdivision shall be mailed in
22 envelopes upon which the plaintiff's, or the plaintiff's attorney's, return address
23 appears, ~~with a request to return to that address.~~

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

1 846.35 (2) (a) (intro.) Notwithstanding ss. 708.02 and 710.10 (3) and ch. 704,
2 all of the following apply to a tenant whose tenancy is terminated as a result of a
3 foreclosure judgment and sale with respect to the rental property:

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

5 846.35 (2) (c) After the sale of the property is confirmed and during the period
6 that the tenant retains possession under this subsection, the purchaser at the sale
7 and the tenant shall have all of the rights and obligations of a landlord and tenant,
8 respectively, under ch. 704 and under the tenant's lease, if any, with respect to each
9 other and the property.

10 **SECTION 10.** 846.35 (6) of the statutes, as ^{affected} created by 2009 Wisconsin Act ²⁸ 2, is
11 amended to read:

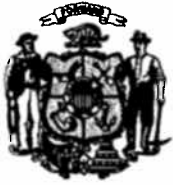
12 846.35 (6) PENALTIES. If a plaintiff fails to provide a notice under ~~par.~~ sub. (1)
13 (a) in accordance with ~~pars.~~ sub. (1) (a), (am), and (b), or fails to comply with sub. (5),
14 the court shall award the tenant to whom the notice should have been given or who
15 should not have been named as a defendant \$250 in damages, plus reasonable
16 attorney fees. A tenant may not recover under this paragraph for more than one
17 notice violation.

18 **SECTION 11. Initial applicability.**

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

22 (2) The treatment of section 846.35 (2) (c) of the statutes first applies to
23 foreclosure sales that are confirmed on the effective date of this subsection.

24 (END)



State of Wisconsin
2009 - 2010 LEGISLATURE

LRBs0391/1
RPN:jld&cjs:ch

ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2009 ASSEMBLY BILL 729

Insert 2-3

1 AN ACT to create 846.015 of the statutes; relating to: mortgage foreclosure
2 procedures.

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

3 SECTION 1. 846.015 of the statutes is created to read:
4 846.015 Additional mortgage foreclosure procedures for
5 owner-occupied residential property. (1) DEFINITIONS. In this section:

6 (a) "Government-sponsored enterprises" means the Federal National
7 Mortgage Association, the Federal Home Loan Mortgage Corporation, and the
8 Government National Mortgage Association.

9 (b) "Mortgagee negotiator" means a mortgagee or mortgage servicer who has
10 the authority to enter into negotiations regarding modifications to a mortgage loan
11 involving owner-occupied residential property.